

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ALLIANCE FOR AUTOMOTIVE
INNOVATION

Plaintiff,

vs.

MAURA HEALEY, ATTORNEY GENERAL
OF THE COMMONWEALTH OF
MASSACHUSETTS in her official capacity,

Defendant.

C.A. No. 1:20-cv-12090-DPW

JOINT STIPULATION

Plaintiff Alliance for Automotive Innovation (“Auto Innovators”) and Defendant Maura Healey, Attorney General of Massachusetts (the “Attorney General”), hereby stipulate to the following facts:

1. Alliance for Automotive Innovation member Subaru of America (“Subaru”) sells Model Year 2022 vehicles to Subaru of New England (“SNE”), an independent company with the wholesale distributorship rights for Subaru vehicles throughout New England. SNE, in turn, distributes those vehicles to the Subaru dealers in New England, all of which are independently owned and operated. Those dealers had Model Year 2022 Subaru vehicles available for sale or lease in Massachusetts beginning in or about June 2021. SNE is not a member of Auto Innovators.

2. Certain Model Year 2022 Subaru vehicles have the ability to utilize a system called STARLINK Safety and Security. The STARLINK Safety and Security system includes features such as automatic collision notification, SOS emergency assistance, remote engine start, remote door lock/unlock, stolen vehicle recovery, enhanced roadside assistance, maintenance notification, vehicle health reports, and diagnostic reports. The system transmits information generated during

the operation of the vehicle using wireless communications to a remote receiving point where it is stored, and thus qualifies as a “telematics system” under the Data Access Law.

3. As a direct result of Section 3 of the Data Access Law, Subaru decided that it will not make the STARLINK Safety and Security system available to Massachusetts residents who purchase or lease Model Year 2022 vehicles. This policy was implemented in or about June 2021, contemporaneously with Subaru vehicles first being offered for sale or lease in Massachusetts.

4. This policy applies to any Model Year 2022 Subaru vehicle that has a Massachusetts address associated with either the vehicle or the STARLINK account (*e.g.*, the owner, co-owner, driver, co-driver, authorized user, business, fleet management company). Regardless of the state in which that vehicle is originally purchased or leased, such Massachusetts-associated vehicles are not able to subscribe to or maintain a subscription to STARLINK Safety & Security.

5. This policy does not apply to Model Year 2022 Subaru vehicles that do not have a Massachusetts address associated with either the vehicle or the STARLINK account. Regardless of the state in which that vehicle is originally purchased or leased, such non-Massachusetts-associated vehicles retain the ability to subscribe to or maintain a subscription to STARLINK Safety & Security.

6. Subaru vehicles that are not enrolled in the STARLINK Safety and Security system are safe. As of the time such vehicles are sold to consumers, they comply with all applicable Federal Motor Vehicle Safety Standards, as well as the Clean Air Act and all applicable regulations promulgated thereunder.

7. Should Auto Innovators prevail in this matter, Subaru intends to begin offering STARLINK subscriptions on MY 2022 vehicles in Massachusetts. Specifically, if the Data Access

Law is invalidated by the Court, Subaru plans to take steps to: (a) inform the then current Massachusetts owners of MY 2022 vehicles that the STARLINK Safety & Security system on their vehicles may now be enabled and how to subscribe, and (b) lift the prohibition on enrollment in the STARLINK Safety & Security system for new vehicles sold in Massachusetts.

8. In August 2021, a private citizen, Kevin Drum, called the Attorney General's office inquiring about the status of the lawsuit concerning the Data Access Law and stating that he was eager to get the STARLINK connected to his newly-purchased Subaru. Mr. Drum indicated that the dealer informed him that the telematics unit could not be activated due to the Data Access Law.

9. The parties stipulate that Exhibit 1 to the Affidavit of Ciara Tran (previously filed as ECF #247-1) is an authentic document that was sent from Jeffrey T. Ruble, Executive Vice President & General Manager of SNE to all Subaru retailers in New England (including those in Massachusetts) on or about June 2, 2021. The Parties stipulate to the admissibility of Exhibit 1 of the Tran Affidavit in this case, and the Attorney General offers it into evidence as Trial Exhibit 100 without objection from Auto Innovators .

10. The parties stipulate that Exhibit 2 to the Tran Affidavit (previously filed as ECF #247-2) is an authentic document, authored by Subaru of America and disseminated through SNE to all Subaru retailers in New England (including those in Massachusetts), entitled "STARLINK Safety & Security Massachusetts (MA)--Telematics Data Law – FAQs." The Parties stipulate to the admissibility of Exhibit 2 of the Tran Affidavit in this case, and the Attorney General offers it into evidence as Trial Exhibit 101 without objection from Auto Innovators.

11. The parties stipulate that Exhibits 3 and 4 to the Tran Affidavit (previously filed as ECF #247-3 and ECF #247-4, respectively) are authentic examples of the window sticker placed by a Massachusetts Subaru retailer on a Model Year 2022 Subaru Outback vehicle offered for sale

or lease in or about September 2021. The Parties stipulate to the admissibility of Exhibits 3 and 4 of the Tran Affidavit in this case, and the Attorney General offers them into evidence as Trial Exhibits 102 and 103, respectively, without objection from Auto Innovators.

It is so stipulated.

Dated: November 26, 2021

Respectfully submitted,

PLAINTIFF ALLIANCE FOR
AUTOMOTIVE INNOVATION,

By its attorneys,

/s/ Laurence A. Schoen

Laurence A. Schoen, BBO # 633002
Elissa Flynn-Poppey, BBO# 647189
Andrew N. Nathanson, BBO#548684
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, P.C.
One Financial Center
Boston, MA 02111
Tel: (617) 542-6000
lschoen@mintz.com
eflynn-poppey@mintz.com
annathanson@mintz.com

John Nadolenco (pro hac vice)
Erika Z. Jones (pro hac vice)
Jason D. Linder (pro hac vice)
Daniel D. Queen (pro hac vice)
Eric A. White (pro hac vice)
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006
Tel: (202) 263-3000
jnadolenco@mayerbrown.com
ejones@mayerbrown.com
jlinder@mayerbrown.com
dqueen@mayerbrown.com
eawhite@mayerbrown.com

Charles H. Haake (pro hac vice)
Jessica L. Simmons (pro hac vice)
ALLIANCE FOR AUTOMOTIVE
INNOVATION
1050 K Street, NW
Suite 650
Washington, DC 20001
Tel: (202) 326-5500
chaake@autosinnovate.org
jsimmons@autosinnovate.org

DEFENDANT ATTORNEY GENERAL
MAURA HEALEY,

By her attorneys,

/s/ Robert E. Toone

Robert E. Toone, BBO No. 663249
Eric A. Haskell, BBO No. 665533
Phoebe Fischer-Groban, BBO No. 687068
Julia Kobick, BBO No. 680194
Christine Fimognari, BBO No. 703410
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, Mass. 02108
(617) 963-2855
eric.haskell@mass.gov

CERTIFICATE OF SERVICE

I certify that on November 26, 2021, a true copy of this document will be sent electronically by the ECF system to attorneys of record identified on the Notice of Electronic Filing.

s/ Laurence A. Schoen

Laurence A. Schoen

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